

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF FRIENDSHIP INTERNATIONAL, BRAD SCOTT, AND ADAM SCOTT FOR AN AQUACULTURE LEASE LOCATED NORTH OF SLOOP ISLAND IN PENOBSCOT BAY, DEER ISLE, HANCOCK COUNTY, MAINE))))))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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On July 12, 2005, Friendship International of Camden, Maine, Brad Scott of Lincolnville, Maine and Adam Scott of Hope, Maine applied for a limited-purpose (experimental), commercial type, aquaculture lease of 2 acres in the coastal waters of the State of Maine, located north of Sloop Island in Penobscot Bay, in the town of Deer Isle, Hancock County, Maine. The applicants requested the lease for a term of three years for the purpose of cultivating green sea urchins (*Strongylocentrotus droebachiensis*), blue mussels (*Mytilus edulis*), European oysters (*Ostrea edulis*), sea scallops (*Placopecten magellanicus*), and American oysters (*Crassostrea virginica*) using suspended culture techniques. The application was accepted as complete on July 13, 2005.

As provided in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on a limited-purpose lease application unless 5 or more persons request a public hearing within the 30-day comment period provided in 12 M.R.S.A. §6072-A(5). Notice of the application was published in the October 13, 2005 issue of the *Island Advantages* newspaper. The applicant, the town of Deer Isle, riparian owners, and other interested parties were notified by letter dated October 3, 2005. No comments or requests for a hearing were received during the 30-day comment period.

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into

consideration the number and density of aquaculture leases; ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

**Evidence Concerning the Nature and
Impact of the Proposed Lease**

In accordance with 12 M.R.S.A. §6072-A (8) and Chapter 2.64(2) of the Department's regulations, the applicants submitted an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to determine the feasibility of raising sea urchins on aquaculture lease sites in order to create a sustainable urchin fishery. The applicant requests a lease of 2 acres for the maximum lease term of three (3) years.

According to the application, the proposed lease activities would consist of transporting urchin seed from the hatchery into an "oyster bag" on the bottom of the lease site. The "oyster bags" are 4 feet wide, four feet long and 4 inches high. Ideally, the seed would be dime-size when placed on the lease. When the urchins reach one-half inch, they would be released into the wild. According to the application, the lease would be used as strictly an urchin out-plant project and the other species listed on the application are a last resort, if the urchin project is unsuccessful. Urchin seed would be obtained from Portsmouth Scuba, a New Hampshire hatchery, and eventually from the University of Maine Center for Cooperative Aquaculture Research in Franklin, Maine.

In accordance with Chapter 2.64(2), the applicants provided an environmental characterization of the proposed lease area. According to the application, the site was chosen because it is good urchin bottom and has produced quality urchins in the past. The proposed lease site encompasses most or all of a large ledge that extends off the northeast end of Sloop Island. The ledge is surrounded by cobble bottom and in the deeper water closer to Sloop Island, the bottom is composed of sand, mud and mussel shells. The water depths at the ledge are estimated to be between 3 to 4 feet at mean low water (MLW) and 5-6 feet at mean high

water (MHW). In the deeper portion of the lease, the water depths are estimated to be approximately 15 feet at MLW and 12-25 feet at MHW. Local flora and fauna include an abundance of laminaria kelp, chondrus crispis, and periwinkles; a common occurrence of coralline algae, lobsters, jonah crabs, and seals at certain times of year; and a rare occurrence of sea urchins and mussels. The current is estimated to be 1-2 knots and flows in an east/west direction. According to the application, the lease activities should have a low environmental impact.

According to the applicants, the proposed lease site is well known to them, as they have harvested urchins in the area. There are lobster traps in the area during the summer months, but not in great abundance. However, any lobster fishing that occurs in the area would be permitted to continue on the lease site. According to the application, there may be some use of the island for recreational purposes, but boaters would be wise to avoid the proposed lease area due to the ledge. The proposed lease area is not located within a navigation channel and there are no moorings in the area. According to the applicants, no one would be restricted from using the lease area, except urchin divers would be asked not to interfere with the urchin cages.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit with the applicants at the proposed lease area on March 9, 2006. The AEC created a site report summarizing the information obtained during the site visit. According to the AEC's report, the proposed site is located north of Sloop Island in Penobscot Bay. No moorings were observed in the area of the proposed lease. The proposed lease is located 40 feet from the intertidal zone of Sloop Island to the south and is bounded to the west by an intertidal ledge. According to the AEC, the proposed lease would not interfere with navigation or riparian access because most of the vessels likely to travel through the area could travel directly over the 4" urchin cages. There are no public facilities located within 1,000 feet of the proposed lease.

According to the AEC, occasional fisheries may be conducted in the proposed lease area and lobstering would likely occur in the area in the summer months. However, lobstering would not be restricted within the boundaries of the proposed lease. According to the AEC, the

intertidal ledge to the west of the proposed lease site is a harbor seal haul-out. He stated that the applicants should make a special effort not to disturb the seals when working on the lease site, particularly during pupping season from mid-May to mid-July.

The AEC expressed a concern in his report that the urchin cages be properly weighted or moored, so as to avoid being rolled in the surge. According to the AEC, the applicants indicated that they intend to weigh the cages and perhaps moor them to the seabed using rebar staples.

Findings of Fact

The proposed lease is located north of Sloop Island in Penobscot Bay. The lease activity would consist of placing urchin seed in bags measuring 4'L x 4'W x 4"H on the bottom of the lease site. No surface structures would be used on the site, other than corner marker buoys. Water depths in the area of the proposed lease at the ledge are estimated to be between 3 to 4 feet at mean low water (MLW) and 5-6 feet at mean high water (MHW). In the deeper portion of the lease, the water depths are estimated to be approximately 15 feet at MLW and 12-25 feet at MHW. Vessels that would travel through the area could traverse over the bags, which would be 4" off the bottom. There are no moorings located within the boundaries of the proposed lease site. No use of riparian land was requested or required. Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

Fishing in the area of the proposed lease site consists of lobster fishing. Lobster fishermen and recreational fishermen would not be restricted from using the lease area. Whereas the proposed lease activities consist of placing bags of 4" in height on the bottom of the lease area, lobstering and other uses may take place within the lease boundaries. Therefore, I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consist of an abundance of laminaria kelp, chondrus crispis, and periwinkles; a common occurrence of coralline algae,

lobsters, jonah crabs, and seals at certain times of year; and a rare occurrence of sea urchins and mussels. The bottom of the proposed lease site consists of ledge surrounded by cobble bottom and sand, mud and mussel shells in the deeper water closer to Sloop Island. The current is estimated to be 1-2 knots and flows in an east/west direction. The proposed lease area is a former productive urchin bed. The intertidal ledge to the west of the proposed lease site is a harbor seal haul-out. The applicants should make a special effort not to disturb the seals when working on the lease site, particularly during pupping season from mid-May to mid-July. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All urchin seed will be obtained from Portsmouth Scuba, a New Hampshire hatchery, and eventually from the University of Maine Center for Cooperative Aquaculture Research in Franklin, Maine. Based on this evidence, I find that there is an available source of green sea urchins.

The proposed lease site is not located within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

The application also lists blue mussels, European oysters, sea scallops, and American oysters as species to be grown on the lease site. However, the application only provides details as to how urchin seed would be obtained and how urchins would be grown on the lease, as well as a statement that this is intended as an urchin project. Without further detail of how the alternative species would be grown on the site, they will not be listed as approved species on the lease document. If the urchin project proves to be unsuccessful, the applicant may apply for a species amendment at that time.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of green sea urchins; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicants' requested limited-purpose commercial aquaculture lease of 2 acres from the date of this decision for the purpose of cultivating green sea urchins (*Strongylocentrotus droebachiensis*) using suspended culture techniques. The applicants shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicants shall post a bond or establish an escrow in the amount of \$1,500 if the gear utilized is less than 400 square feet and \$5,000 if the gear utilized is greater than 400 square feet, conditioned upon their performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest

multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed on the lease; and
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

Mary E. Costigan (Hearing Officer)
Department of Marine Resources